



Californians for  
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To: ceq\_nepa@fs.fed.us  
cc:  
Subject: Comments to NEPA Task Force

CQ632

09/24/02 02:27 PM

Dear Mr. Simpson,

As you requested, here is another copy of the comment letter submitted by Californians for Alternatives to Toxics on September 23, 2002. A hard copy follows in the mail.

Sincerely,

Petra Taylor-Vandormael  
Project Associate

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September 23, 2002

NEPA Task Force  
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Re: Request for Comments on National Environmental Policy Act Task Force (67 FR 45510)

Dear Chairman Connaughton:

These comments are submitted on behalf of the members of Californians for Alternatives to Toxics (CATs), a public interest organization which has for more than 20 years been concerned with activities by the U.S. Forest Service and other federal agencies that involve the use of herbicides or create conditions that are likely to lead to pest control involving the use of pesticides, including herbicides. CATs has actively participated in reviewing, commenting on and/or appealing hundreds of NEPA analyses. CATs has also prevailed in litigation challenging inadequate NEPA analyses.

The following comments are provided in response to the NEPA Task Force's request for comments on its review of effective NEPA implementation practices to develop a publication of case studies including examples of best practices. We appreciate the opportunity to comment.

First, we must emphasize that NEPA—despite its flaws—is one of the most important laws enacted in the continuing effort to protect and restore the unique and diverse natural systems of this nation. NEPA established an open and public approach to federal actions that has led to more informed decisionmaking. As is true with any law, the ensuing years of implementation reveals that there is room for improvement, but the underlying tenants of NEPA remain as legitimate today as they were in 1972.

CATs' involvement in USDA Forest Service projects that concern vegetation management, serves as just one example of its broad experiences with NEPA processes across many different agencies. Over the years, CATs has worked on reviewing NEPA and CEQA analyses of many agencies, including the Bureau of Land Management, California Department of Forestry and Fire Protection, etcetera. CATs has found that agencies are failing in their NEPA duties, due to their limited understanding of procedures, lack of funds or lack of staff. As a result, NEPA's potential as a tool for public participation has frequently not been realized. Essentially, CATs' observations show that government agencies have failed to realize all of NEPA's purposes.

These comments are responsive to the numbered questions provided in the Federal Register notice.

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A1. In many of the EAs and EISs we review, repeatedly, we have identified a gap between what the best available science indicates is an ecologically appropriate management approach and what the responsible agency actually proposes and analyzes. Sometimes the preferred alternative even contradicts the recommendations of agency scientists. Other times, the analysis contained within an EIS relies on information that is not readily available to the general public, and so interested parties cannot evaluate the applicability of the underlying assumptions. And more often than not the analyses of different topic areas within an EIS are presented in a piecemeal fashion, so that the end result is a set of recommendations that is entirely disconnected not only from the best available science but also from the analytical underpinnings of the EIS itself.

In commenting on NEPA analyses, CATs relies upon its own library and staff to address issues within its expertise, but also relies heavily on experts within a given field to provide the information on environmental effects that is frequently missing from NEPA analyses that we review. Often, the information on impacts is available within the federal agency itself and is documented in reports prepared by staff biologists, hydrologists or other experts, but not included in the EA or EIS. Frequently, however, we submit scientific information to agencies, which fail to include it in their analyses.

A2. As stated above, environmental analyses often are based on information that is not readily available to the public and on information that is outdated or not the best available science. Very often, upon receiving a draft NEPA document, we must carefully comb through the document and identify studies and other primary information sources that only are contained within the administrative record, and then request these studies or data from the responsible agency. It would be more helpful for agencies to identify the information on which they base their analyses at the incipient stages of the NEPA process, and to make it available electronically (e.g., via the world wide web), so that interested parties can help identify information gaps as soon as possible. This would likely improve agency efficiency and help reduce the risk of lengthy revisions and/or administrative or legal challenges because important information was not considered.

A4. CATs has set up a database to keep track of all conversations, requests for documents, receipt of documents and writing of comment letters for all NEPA projects of interest to our organization because agency mailing lists of interested parties are frequently not well managed, or disregarded when the time comes to send interested parties the documents they requested. Our database tracks project status, and keeps an overview of procedure compliance and irregularities. It became clear that recordkeeping is necessary to ensure we are sent NEPA documents relating to projects in which we have expressed an interest. For example, CATs had been on the mailing list for NEPA documents pertaining to the Independence Community Defense Zone, Fuel Hazard Reduction Project on Eldorado National Forest since July 10, 2001, but discovered in a routine call to check on the project's status in August 2002 that the project had in the mean time gone through public comment and that the Forest Service was almost ready to issue a decision. The Forest Service never notified CATs that the project had undergone analysis.

A5. CATs would prefer to be notified by e-mail of NEPA document availability, and directed to the Agency website for downloading and printing, or directed to a contact person for requesting a hard copy of the document. This way, the Agency would be relieved to a great extent from the burden of printing, and could provide a fast and reliable way of notification. Availability of all NEPA documents on Agency websites would greatly improve accessibility.

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However, not all participating parties have access to information technology. Therefore, it is necessary to maintain hardcopy distribution by mail for parties that prefer to be contacted in this manner.

A6. In order to inform the public and gather public input, the USDA Forest Service publishes quarterly reports (Schedule of Proposed Actions). However, not every National Forest publishes SOPAs or publishes it in a timely manner. For example, Inyo National Forest in California has not published a SOPA since December 2000, and San Bernardino National Forest has not published one since November 2001. Other federal agencies should also publish similar quarterly reports.

A7. Does 'information security' apply to matters of national security or law enforcement? Public involvement is a foundational element of our democracy and should be the first priority in all but rare circumstances. If the public is expected to provide relevant and educated comments, it needs to be informed of the proposed action to the fullest extent possible.

C1. Programmatic analysis is suitable for issues that are widely experienced, and projects that share similar goals, such as fuelbreak construction and maintenance. Also, activities that occur over a wide area can have a disproportionate impact on species or habitat type, which may not be adequately addressed at the site-specific level. Full analysis of all possible alternatives and environmental consequences should be performed for various situations and scenarios. The current problem lies not in the duplication of issues, but omission of adequate analysis. Well-written, detailed programmatic analyses with a high degree of public and Agency approval can reduce some of the burden of analysis, but will never be able to fully substitute for site-specific analysis.

Likewise, tiering can play an important role in environmental planning processes *if* the overarching programmatic analysis is done properly and *if* it is employed to verify the appropriateness and accuracy of the larger scale programmatic analysis and not simply to validate it. All too often tiered analyses are seen as an "easy out"—instead of making a good faith effort to evaluate and ground-truth the underlying assumptions of the programmatic analysis, site-specific level analyses utilize the original document as a stamp of approval for going forward with a given project.

For example, the Lassen, Plumas and Tahoe National Forests prepared a programmatic EIS for the Quincy Library Group Act Fuels Reduction pilot project, a large project spanning over 300,000 acres of National Forest. Subsequently, the various forests have prepared site-specific DFPZ project EAs, which tier to the larger EIS. However, the flaws and omissions stemming from the programmatic analysis have simply been repeated in the site-specific EAs. Namely, the EIS failed to evaluate the long-term effects of maintaining, or failing to maintain, the constructed DFPZs and the resultant potential use of herbicides or the resultant increase in fire risks due to understory vegetative growth. CATs sued the Forest Service for its inadequate analysis in the EIS and won; yet, still the Forest Service has failed to complete the final supplemental EIS as ordered by the Court. Consequently, the site-specific EAs continue to defer to the QLGEIS as a basis for much of their analysis, and ignore the key issue of what happens to these DFPZs when the understory, highly flammable vegetation grows back. The programmatic EIS should have evaluated these issues in the first instance and provided a template for how these issues would be further addressed at the site-specific level.

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D. In theory, CATs agrees that adaptive management is a valuable tool for adjusting agency action to management outcomes that were unforeseen or inaccurately predicted. In another 1997 report ("The National Environmental Policy Act: A study of Its Effectiveness After Twenty-Five Years"), the CEQ summarizes the consensus on the appropriate trigger for adaptive management as follows: "where resources are not likely to be damaged permanently and there is an opportunity to repair past environmental damage, and adaptive environmental management approach may be the best means for an agency to meet its specific and NEPA missions." (Executive Summary, p. x.) In other words, adaptive management should not be an open-ended experiment of "wait and see" conducted across large areas, but rather a carefully designed experiment that ameliorates rather than invites risk. Also, adaptive management should not be a substitute for an agency taking affirmative steps to protect natural resources and species with the best information available. The ability to design appropriate adaptive management programs so far has been hampered by a lack of current, quality baseline environmental data.

D3. Adaptive management cannot be used as an avenue to avoid conducting NEPA analyses and involving the public in agency decision-making. For instance, if new data, developed through monitoring, indicates that management direction should be altered in order to achieve a specific result, the public should have an opportunity to review that data and comment on the proposed action. Similarly, to the extent new data suggests a different approach to management, the agency should weigh various alternatives and consider those alternatives in a NEPA analysis. If there is no potential for significant impact, a Finding of No Significant Impact (FONSI) can be issued.

D4. One significant problem with adaptive management (and delaying active decision-making to protect a resource) is that it requires money, staff expertise and agency commitment to be effective. Too often, good intentions to use monitoring and adaptive management, result in agency inaction. Thus, funding, staff resources and the environmental risk of inaction need to be carefully considered in any plan for adaptive management.

E1. Categorical exclusions should rarely be used, if at all. NEPA already allows for an abbreviated environmental review of those activities that do not pose a significant impact (an EA and Finding of No Significant Impact or FONSI). However, when used, they must be preceded by public scoping so that the public has an opportunity to submit information, which may raise issues of potential impacts on the environment. ("Scoping is required on all proposed actions, including those that would appear to be categorically excluded." Environmental Policy and Procedures Handbook FSH 1909.15 – 30.3.3). All categorical exclusions should be supported by valid scientific evidence and data, rather than agency conjecture.

In the application of Categorical Exclusions, the Forest Service regularly violates its own regulations as outlined in the Environmental Policy and Procedures Handbook (FSH 1909.15). Public scoping is not applied by the USDA Forest Service to the fullest extent possible in the determination of CEs. Too often, categorical exclusions are predetermined. In some cases, public input is completely eliminated. For example, the Sierra National Forest has stated: "Due to the brief planning time frame of hazard tree sales and special use permittee requests, some sales and issuance of permits may be planned, analyzed, and awarded in between the quarterly publication of this schedule [of proposed actions]. When this happens, notice of the action will be published in the next schedule." (USDA FS Sierra National Forest SOPA). On the Ranger Districts of several California National Forests, the publication of the project in the SOPA is considered as scoping for Categorical Exclusions, and no other efforts to involve the public are

made. This happens on Descanso Ranger District (Cleveland National Forest), Santa Clara/ Mojave Rivers Ranger District (Angeles National Forest), High Sierra Ranger District (Sierra National Forest), Placerville Ranger District (Eldorado National Forest), and Groveland Ranger District (Stanislaus National Forest). The effect is that the public often does not know of a categorically excluded action until after it has occurred.

Many of the activities that currently are authorized under the Forest Service's CE policy do in fact create environmental impacts. Perhaps individually the impacts are not significant, but the cumulative effects are unknown because *no environmental analysis is required*. The high potential for significant impacts, particularly cumulative impacts, is of particular concern to CATs.

For example, recently the Forest Service, in Region 5, has begun categorically excluding from analysis project proposals for the construction of DFPZs. On December 5, 2001, the Los Padres National Forest issued a decision memo and categorical exclusion for two DFPZs (Frazier Park and Pine Mountain Club DFPZs). The Forest Service did not evaluate the environmental impacts of these two projects, which cumulatively may have a significant impact on the environment. CEs should not be used as a means of expediting a project that is intended to have a potentially significant and potentially long-term effect on forest resources (i.e. by allegedly decreasing the risk of fires, but with the price of potential herbicide application, and an actual increase in the risk of fire if not properly created or maintained over time). Public involvement is critical to realizing effective fire prevention measures with minimal environmental costs. This is just one example of how categorical exclusions are misused and ineffective.

#### Conclusion

CATs agrees that implementation of NEPA is often complex, but so is the natural environment in which we function. The Task Force, in seeking ways to "improve and modernize NEPA," must keep this complexity in mind when evaluating current environmental analysis procedures. The past 30 years of implementing NEPA, combined with our growing understanding of ecological processes, has taught us that rarely are important decisions about the health and well being of human, animal, and plant communities arrived at quickly and with little effort.

Respectfully,

Patricia M. Clary  
Executive Director